

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE ALLEGED)	
VIOLATIONS OF KRS CHAPTER 278 BY)	CASE NO. 10019
SANICO, INC.)	

O R D E R

On September 2, 1987, the Commission ordered Sanico, Inc. ("Sanico") to show cause why it should not be penalized for its alleged violation of KRS 278.020(4). This action followed our receipt of a Complaint Inspection Report, prepared by Commission Staff, which alleged that Sanico had abandoned its sewage treatment facilities in Mason County, Kentucky. See Exhibit A to this Order. Shortly thereafter, Sanico petitioned for relief under Chapter 7 of the United States Bankruptcy Code. Concerned that Sanico's petition operated as a stay of these proceedings, see 11 U.S.C. §362, the Commission continued these proceedings generally.

The Commission was recently advised that Sanico's bankruptcy petition has been dismissed. See Exhibit B to this Order.¹ As

¹ In Re Sanico, Inc., No. 87-815 (Bankr. E.D. Ky. Dec. 6, 1989) (order dismissing case). On the same day, the Bankruptcy Court also ruled that a Commission investigation, pursuant to KRS 278.250 and KRS 278.260, into the operation of Sanico was not precluded by 11 U.S.C. §362.

the stay no longer operates against this proceeding, the Commission finds that it should be resumed.

After reviewing the evidence presently in the record, the Commission further finds that this evidence constitutes a prima facie finding that James P. Breslin, the principal operating officer of and a stockholder in Sanico, aided and abetted Sanico's alleged violation of KRS 278.020(4). Accordingly, Mr. Breslin should also be required to show cause why he should not be penalized for his role in the alleged abandonment of Sanico's sewage treatment facilities.

The Commission further finds that the scope of this proceeding should be expanded to investigate the financial and technical condition of Sanico's operations. On July 10, 1989, the Kentucky Secretary of State administratively dissolved Sanico's certificate of incorporation. See Exhibit C to this Order. On December 1, 1989, Mason Circuit Court appointed the City of Maysville Utility Commission as receiver on a temporary basis to operate Sanico's sewage treatment facilities. See Exhibit D to this Order. These events and the failure of Sanico to operate its sewage treatment facilities since July 1, 1987, see Exhibits E, F and G to this Order, raise serious questions about the quality and continuity of Sanico's service. An examination of Sanico's condition, as provided for by KRS 278.250 and 278.260, is therefore required.

The Commission, on its own motion, HEREBY ORDERS that:

1. Sanico shall appear before the Commission on May 22, 1990, at 10:00 a.m., Eastern Daylight Time, in Hearing Room No. 1

at the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of showing cause why it should not be subject to the penalties prescribed in KRS 278.990 for its alleged failure to comply with KRS 278.020(4).

2. James P. Breslin, in his individual capacity, shall appear before the Commission on the same day and at the same time and place for the purpose of showing cause why he should not be subject to the penalties of KRS 278.990 for allegedly aiding and abetting Sanico's violation of KRS 278.020(4).

3. Sanico and Mr. Breslin shall submit to the Commission within 21 days of the date of this Order a written response to the allegations stated in this Order and in the Commission's Order of September 2, 1987.


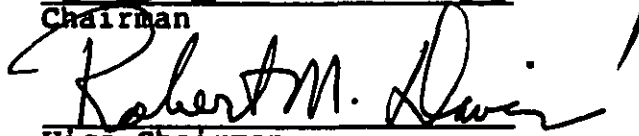
4. Evidence concerning the present financial condition of Sanico as an unincorporated entity and/or James P. Breslin and other Sanico shareholders, the current condition of Sanico's sewage treatment facilities, and its ability to ensure the continuity of sewer service to its customers shall also be heard at the scheduled hearing in this matter.

5. All Exhibits attached hereto are hereby made a part of the record of this case.

Done at Frankfort, Kentucky, this 16th day of March, 1990.

ATTEST:


Executive Director

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

Commonwealth of Kentucky
Public Service Commission

COMPLAINT INSPECTION REPORT

Sanico, Inc.
Maysville, Kentucky

July 29, 1987

BRIEF

On July 24, 1987, the Commission received a telephone call from Ms. McHugh, office manager of Maysville Utility Commission ("Maysville") concerning Sanico, Inc., ("Sanico"). The complaint was that Sanico had notified its customers that its sewer system had been turned over to Maysville and that it would not be responsible for any future billings. Also that Sanico had Kentucky Utilities Company ("KU") remove the electric meter from the two lift stations on Hinton Drive and that raw sewage was running out the overflow pipe. Ms. McHugh stated that Maysville did not want ownership or operation of Sanico and would not accept responsibility for the sewer system. The Division of Utility Engineering and Services received a request from Forest M. Skaggs, Executive Director of the Commission on July 24, 1987, to conduct an investigation to determine the current operational condition of Sanico. A field investigation was made on July 28, 1987, (see attached photos taken during the inspection).

INVESTIGATION

The investigation consisted of interviewing Mr. Breslin, President of Sanico by telephone; interviewing Mrs. Charlene

Duncan, a Sanico customer; holding a conference at the Maysville's office with Ms. McHugh, office manager, Dennis Redmond, City of Maysville manager and Mr. Roy Lasbrooke, manager of Maysville; and a field inspection. The following information was obtained:

1. James P. Breslin, president of Sanico has notified its customers, by letter dated July 2, 1987, that the sewer system of Sanico has been turned over to Maysville.
2. Sanico notified its customers by letter, dated July 2, 1987, that it will not be responsible for any billings after July 2, 1987.
3. Mr. Breslin, president of Sanico, requested KU to disconnect service to its two lift stations on Hinton Drive by certified letter, dated July 2, 1987.
4. Raw sewage is overflowing from the lift station at 361 Hinton Drive.
5. Maysville rejects Mr. Breslin claim that its owns Sanico.
6. The Commission was not notified by Sanico that it had transferred ownership to Maysville.
7. KU disconnected the electric service to the two lift stations owned by Sanico on July 7, 1987.

8. Customers of Sanico are going to request KU to reinstall the electric meter to the lift station until such time it is decided who owns Sanico. The customers will pay the electric bills.


CONCLUSIONS

1. Sanico is operating as a public utility subject to Commission jurisdiction pursuant to KRS 278.010.

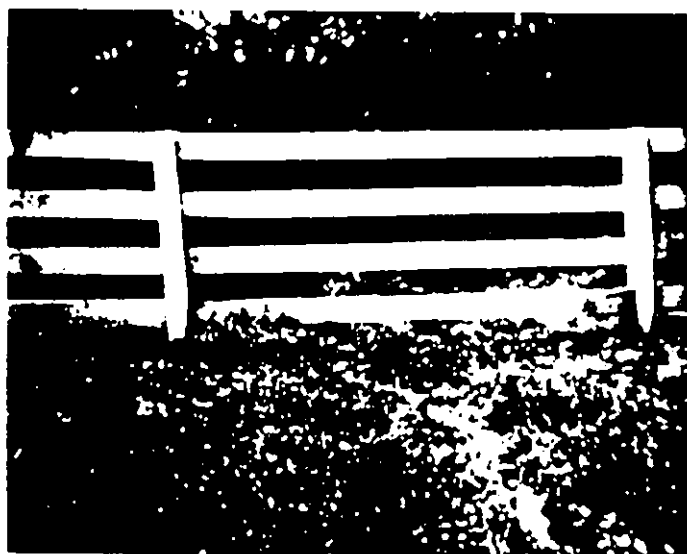
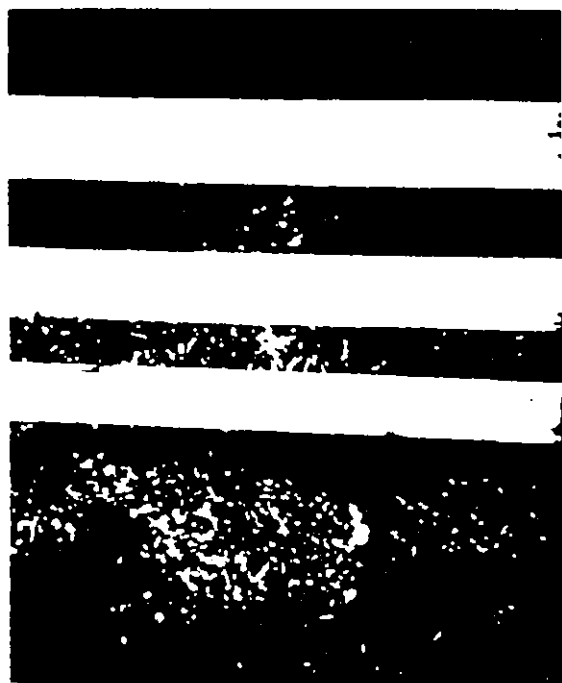
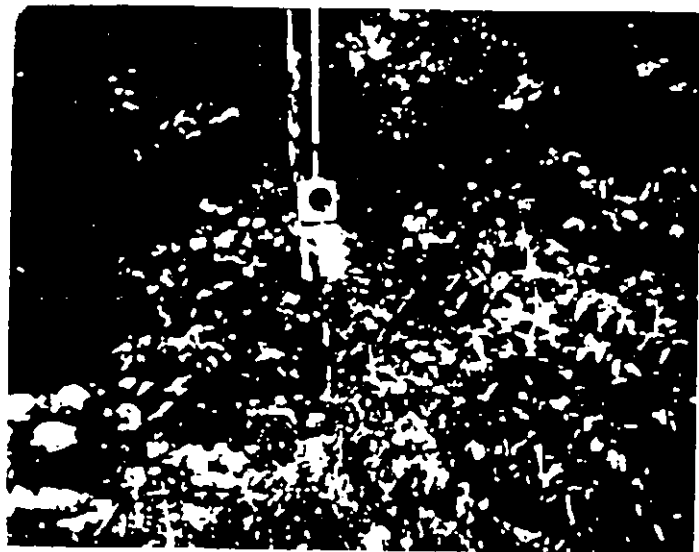
2. The Commission should require Sanico to operate the sewage system until such time that Sanico proves that it is not the owner.

3. A Show Cause Order should be initiated against Sanico to show cause why it should not be subject to penalties described in KRS 278.990 for failure to comply with Commission regulations.

Submitted,
July 29, 1987


Larry N. Updike
Utility Investigator

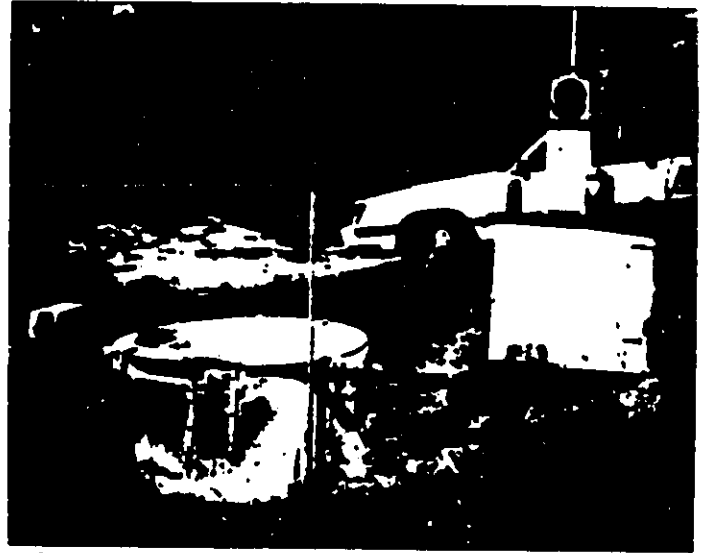
LNU:aem



INSPECTION PHOTOGRAPHS



7/28/87
Sanico, Inc.
Pump Station at the end of Hinton Dr.



7/28/87
Sanico, Inc.
Pump Station at the end of Hinton Dr.
and Missing electric meter

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON

EASTERN DISTRICT OF KENTUCKY

FILED

DEC 06 1989

AT LEXINGTON
BETTY L. JENNETTE, CLERK
U.S. BANKRUPTCY COURT

IN RE:

SANICO, INC.,
A Kentucky Corporation

DEBTOR

CASE NO. **FILED**
87-408 E D

DEC 7 1989

PUBLIC SERVICE
COMMISSION

ORDER

10019

This case was heard by the court on September 9, 1988, pursuant to order of the court on its own motion directing the debtor to show cause why the case should not be dismissed pursuant to 11 U.S.C. §305(a). Following the hearing, the court continued the matter generally until after issuance of the division of the Commonwealth of Kentucky Court of Appeals in an appeal from an order of the Mason Circuit Court dismissing a counterclaim asserted by the debtor in civil action no. 87-C-004 in that court.

The appeal in that matter having been disposed of adversely to the debtor, the court finds this case should be and hereby is dismissed.

As a corporate debtor, the debtor is precluded from receiving a discharge of its obligations in this chapter 7 case. 11 U.S.C. §727(a)(1).

The obligations of the debtor, except for an indebtedness of \$400.00, are owed to John P. Breslin, the President of the debtor, or to other entities in which Breslin holds an interest.

The court finds that the interests of creditors would be better served by dismissal of this case, in order that the business

of the debtor may be operated by a state court receiver
interests of creditors protected thereby.

Accordingly, acting under authority vested in the court
by 11 U.S.C. §305(a)(1), and 11 U.S.C. §105(a), the court finds
this case should be and hereby is dismissed.

Dated: Dec. 6, 1989.

By the Court -


JUDGE

Copies to:

Howell W. Vincent, Esq.
Charles L.J. Freihofer, Esq.
Gerald E. Wuetcher, Esq.
Charles Kurtz, Esq.
All creditors and parties in interest.



OFFICE OF SECRETARY OF STATE
CERTIFICATE

I, BREMER EHRLER, Secretary of State of the Commonwealth of Kentucky, do hereby certify, that according to the records in the Office of the Secretary of State of the Commonwealth of Kentucky, SANICO, INC. was a corporation organized and existing under the laws of the State of Kentucky ; that it was qualified to trade and do business in the Commonwealth of Kentucky on February 14, 1972 .

I further certify, that said corporation has not filed the required annual report and, therefore, the Secretary of State Administrative Dissolved its Certificate of Incorporation on July 10, 1989.

A handwritten signature in cursive script, reading "Bremer Ehrler", is written over a horizontal line.

Bremer Ehrler
Secretary of State
Commonwealth of Kentucky

by: gb

EXHIBIT C

COMMONWEALTH OF KENTUCKY
19TH JUDICIAL CIRCUIT
MASON CIRCUIT COURT
Civil Action No. 87-CI-145

FILED

DEC 11 1989

PUBLIC SERVICE
COMMISSION

SANICO, INC.

PLAINTIFF

V.

ORDER

COMMONWEALTH OF KENTUCKY, ET AL.

DEFENDANTS

* * * * *

This matter came on to be heard on 1 December 1989 on the Motion of the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, for the appointment of the City of Maysville Utility Commission as receiver to operate and maintain the abandoned Sanico, Inc. sewer system in Mason County, Kentucky, it appearing from the statement of Tim Stump in open court on behalf of Buffalo Trace District Health Department that said Department does not have the manpower or expertise to operate and maintain Sanico's sewer system as receiver, and it further appearing that the alternate nomination by the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, of City of Maysville Utility Commission as receiver is the only feasible choice because it presently provides water service to Sanico's customers and operates a sewer system outside of Sanico's territorial jurisdiction and has the capability of operating and maintaining Sanico's sewer system as receiver and presently treats the sewage collected by Sanico which is gravity fed and pumped into the City of Maysville Utility Commission sewage system, and it

further appearing from statement of counsel for the City of Maysville and City of Maysville Utility Commission in open court that neither of them desire to operate, maintain, or exercise any control over Sanico's sewer system and the City of Maysville Utility Commission would do so as receiver only if ordered by the court on a temporary basis until a more suitable permanent receiver be appointed or this action is otherwise disposed of, and it further appearing that appointment of a receiver herein is not stayed or otherwise barred by the now pending proceedings in the United States Bankruptcy Court on Sanico's petition for bankruptcy, the Court being sufficiently advised:

NOW THEREFORE, IT IS ORDERED AND ADJUDGED that the City of Maysville Utility Commission is hereby appointed receiver, on a temporary basis pending further orders herein, to take over the operation and maintenance of the Sanico, Inc. sewer system.

IT IS FURTHER ORDERED that as receiver, the City of Maysville Utility Commission, is authorized to do all things necessary to operate and maintain the system, in conformity with Kentucky law, including collecting reasonable service charges to finance repairs of Sanico's abandoned system, including the two pumping stations near Hinton Drive, and to pay for the continued maintenance of the system. The City of Maysville Utility Commission shall segregate and account separately for all receipts from and expenditures for operation and maintenance of the system and shall report same to the Court periodically, not less often than semi-annually, and upon

-

termination of the receivership. All persons holding funds in escrow or otherwise derived from Sanico customers in lieu of paying Sanico service charges are hereby authorized to pay the same to the receiver hereby appointed, to be applied to operation and maintenance of Sanico's sewage system. The City of Maysville Utility Commission shall have the right to pay itself its customary rate of \$1.12 per 1,000 gallons for treating sewage collected from Sanico's system and to reimburse itself at its actual cost for all operation and maintenance expenses it may incur for the benefit of Sanico's system. The fee for acting as receiver is reserved for further orders upon application by City of Maysville Utility Commission. Bond of City of Maysville Utility Commission for acting as receiver is fixed at \$15,000, with surety approved by the Mason Circuit Clerk, and bond premium, if any, reimbursable from Sanico receipts.

1 December 1989.



RICHARD L. HINTON
MASON CIRCUIT JUDGE

ENTERED

DEC 1 1989

EDWARD A. TOLLE, CLERK
MASON CIRCUIT COURT
BY: *[Handwritten signature]* cc

Commonwealth of Kentucky
Public Service Commission

UTILITY INSPECTION REPORT

Sanico, Inc.
Maysville, Kentucky

Utility operations, utility maintenance, utility management and their impact on utility services and operating costs are a primary concern of the Commission and this Division. Our ongoing inspection program is to determine if the utility is in compliance with Kentucky Revised Statutes (KRS 278), Public Service Commission (PSC) Regulations (807 KAR) and that adequate, efficient and reasonable service is being provided.

Daily maintenance, daily operations and good operating records are essential in the operation of an efficient utility. Our inspections are intended to determine if the utility is in compliance with PSC regulations in these areas.

On February 17, 1988, Sanico, Inc., sewage treatment system was inspected for compliance with KRS 278 and PSC regulations (807 KAR). No representative of Sanico, Inc., was present at the time of the inspection.

The improvements or corrections necessary to bring this facility into compliance with KRS 278 and PSC regulations (807 KAR) are as follows:

Lift Station behind residence at 361 Hinton Drive

1. The raw sewage pump on the left is missing. This pump needs to be replaced and put in service. (see attached photo) (807 KAR 5:071, Section 7, 1)

2. The lid covering the lift station needs to be secured to the walls of the lift station. (807 KAR 5:071, Section 7, 4)
3. The sewage overflow from the lift station needs to be limed. (807 KAR 5:071, Section 7, 1)
4. All exposed electrical wires need to be protected. (807 KAR 5:071, Section 7, 4)

Lift station at the end of Hinton Drive (see attached photo)


1. The pumps in the lift station need to be wired correctly. The pumps should be wired so they will operate independently of each other. Also the pumps should be wired to alternate operation. (807 KAR 5:071, Section 7, 1)
2. The lid covering the lift station needs to be secured to the wall of the lift station. (807 KAR 5:071, Section 7, 4)
3. The door to the control panel needs to be kept locked. (807 KAR 5:071, Section 7, 4)
4. The pump controls need to be inspected and repaired or replaced as necessary to properly operate the sewage lift pumps. (807 KAR 5:071, Section 7, 1)
5. All sludge deposits in the creek should be removed. (807 KAR 5:071, Section 7, 4)
6. All exposed electrical wires need to be protected. (807 KAR 5:071, Section 7, 4)

Recommendations

The repair or correction of the deficiencies listed above is necessary in order to restore this facility to an acceptable operating condition. The pertinent section of the Kentucky Administrative Regulations has been listed by each deficiency for

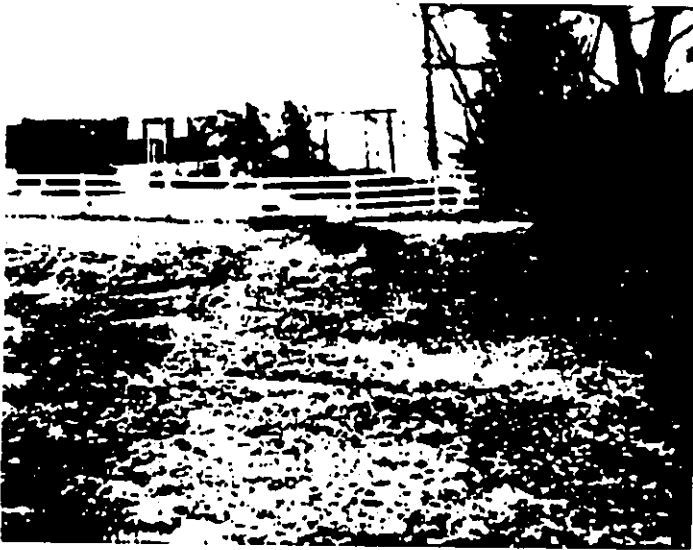
your convenience. A written response should be prepared and forwarded to the Commission by March 21, 1988, outlining a correction schedule stating what has been completed or what will be done to correct each deficiency and the related cost of each correction. A starting date and a completion date should be given for corrections that are to be completed after the date this response is mailed.

Submitted,
February 19, 1988

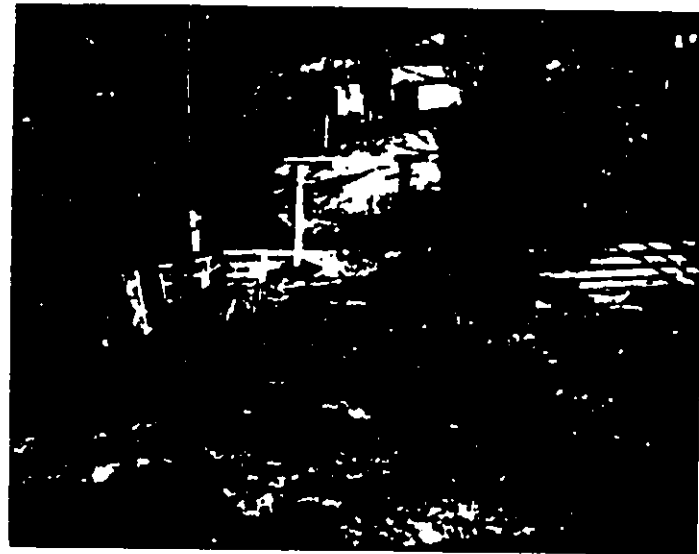

Larry N. Uddike
Utility Investigator

CGR:LNU:aem

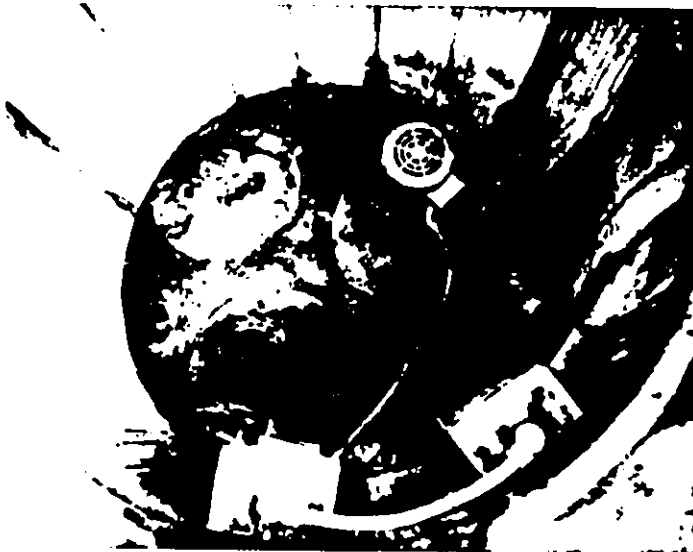
EBT
CR



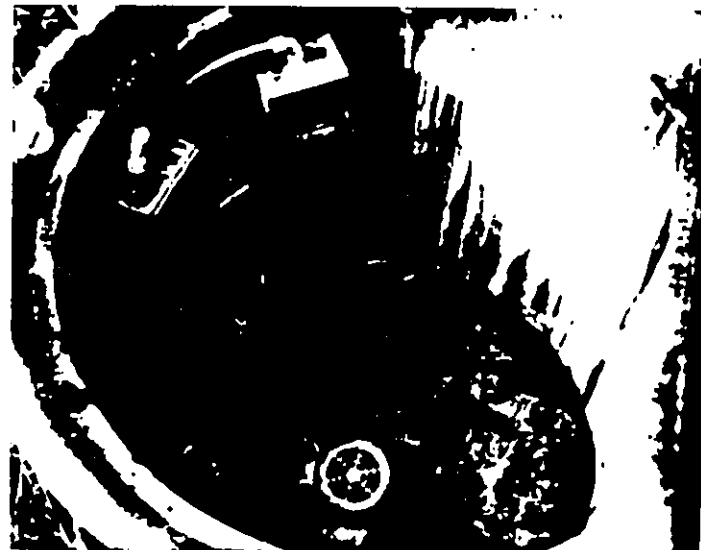
SANICO, INC. 2/17/88
Lift Station at 361 Hinton Dr.
Sewage overflow from lift station



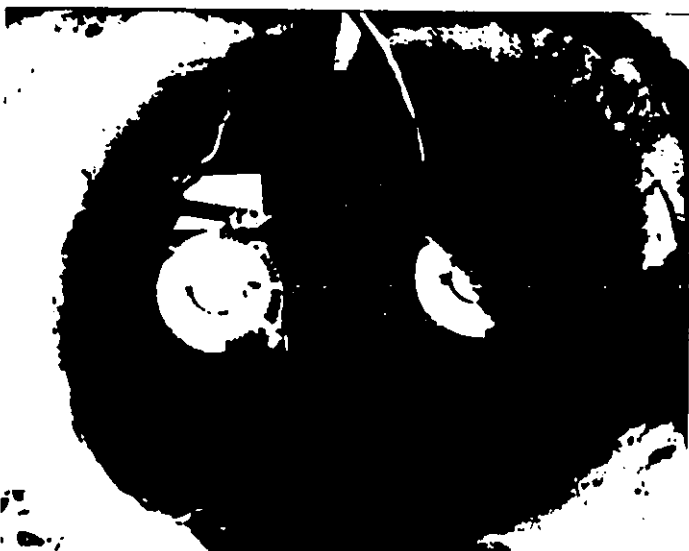
SANICO, INC. 2/17/88
Lift Station at 361 Hinton Dr.



SANICO, INC. 2/17/88
Lift Station at 361 Hinton Dr.
Missing Raw Sewage Pumps.



SANICO, INC. 2/17/88
Lift Station at 361 Hinton Dr.
Pump Controls & Missing Raw Sewage Pumps.



SANICO, INC. 2/17/88
Lift Station at end of Hinton Dr.
Raw sewage pumps



SANICO, INC. 2/17/88
Lift Station at end of Hinton Dr.



SANICO, INC. 2/17/88
Lift Station at end of Hinton Dr.
Sludge deposits in creek from overflow
from lift station.

Commonwealth of Kentucky
Public Service Commission

UTILITY INSPECTION REPORT

Sanico, Inc.
Maysville, Kentucky

Utility operations, utility maintenance, utility management and their impact on utility services and operating costs are a primary concern of the Commission and this Division. Our ongoing inspection program is to determine if the utility is in compliance with Kentucky Revised Statutes (KRS 278), Public Service Commission (PSC) Regulations (807 KAR) and that adequate, efficient and reasonable service is being provided.

Daily maintenance, daily operations and good operating records are essential in the operation of an efficient utility. Our inspections are intended to determine if the utility is in compliance with PSC regulations in these areas.

On February 22, 1989, Sanico, Inc., sewage treatment system was inspected for compliance with KRS 278 and PSC regulations (807 KAR). This utility consists of a collection system. This system is located in Mason County and has approximately 114 customers. No representative of Sanico, Inc., was present at the time of the inspection.

The improvements or corrections necessary to bring this facility into compliance with KRS 278 and PSC regulations (807 KAR) are as follows:

Lift Station behind residence at 361 Hinton Drive

1. The raw sewage pump on the left is missing. This pump needs to be replaced and put in service. (see attached photo) (807 KAR 5:071, Section 7, 1)
2. The lid covering the lift station needs to be secured to the walls of the lift station. (807 KAR 5:071, Section 7, 1)
3. Sewage was overflowing from the overflow line. This problem needs to be alleviated. (807 KAR 5:071, Section 7, 1)
4. The sewage overflow from the lift station needs to be limed. (807 KAR 5:071, Section 7, 1)
5. All exposed electrical wires need to be protected. (807 KAR 5:071, Section 7, 4)

Lift station at the end of Hinton Drive
(see attached photo)

1. The pumps in the lift station need to be wired correctly. The pumps should be wired so they will operate independently of each other. Also the pumps should be wired to alternate operation. (807 KAR 5:071, Section 7, 1)
2. The lid covering the lift station needs to be secured to the wall of the lift station. (807 KAR 5:071, Section 7, 1)
3. The door to the control panel needs to be kept locked. (807 KAR 5:071, Section 7, 1)
4. The pump controls need to be inspected and repaired or replaced as necessary to properly operate the sewage lift pumps. (807 KAR 5:071, Section 7, 1)
5. All sludge deposits in the creek should be removed. (807 KAR 5:071, Section 7, 4)
6. All exposed electrical wires need to be protected. (807 KAR 5:071, Section 7, 4)

7. The power needs to be restored. (807 KAR 5:071, Section 7, 1)
8. The odor being emitted needs to be alleviated. (807 KAR 5:071, Section 7, 1)
9. The power handle at the electric box on the electric pole needs to be secured in the "on" position. (807 KAR 5:071, Section 7, 4)

Recommendations

The existing conditions at the two lift stations violate the Commission's service regulations 807 KAR 5:071, Section 7(1).

The repair or correction of the deficiencies listed above is necessary in order to restore this facility to an acceptable operating condition. The pertinent section of the Kentucky Administrative Regulations has been listed by each deficiency for your convenience. A written response should be prepared and forwarded to the Commission by April 10, 1989, outlining a correction schedule stating what has been completed or what will be done to correct each deficiency and the related cost of each correction. A starting date and a completion date should be given for corrections that are to be completed after the date this response is mailed.

Submitted,
March 7, 1989


Larry N. Uddike
Utility Investigator

EBJ
ex



SANICO, INC.
Lift Station at 361 Hinton Dr.
Pump Controls & Missing Raw Sewage Pump



SANICO, INC.
Lift Station at 361 Hinton Dr.
Missing Raw Sewage Pumps.

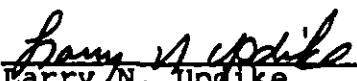
Commonwealth of Kentucky
Public Service Commission

UTILITY REINSPECTION REPORT

Sanico, Inc.
Mason County, Kentucky

On October 30, 1989, a reinspection of Sanico, Inc., was conducted. The condition of the utility is substantially the same as the March 7, 1989, inspection report (see attached).

Submitted
November 6, 1989



Larry N. Updike
Utility Investigator

LNU:aem

Commonwealth of Kentucky
Public Service Commission

UTILITY INSPECTION REPORT

Sanico, Inc.
Maysville, Kentucky

Utility operations, utility maintenance, utility management and their impact on utility services and operating costs are a primary concern of the Commission and this Division. Our ongoing inspection program is to determine if the utility is in compliance with Kentucky Revised Statutes (KRS 278), Public Service Commission (PSC) Regulations (807 KAR) and that adequate, efficient and reasonable service is being provided.

Daily maintenance, daily operations and good operating records are essential in the operation of an efficient utility. Our inspections are intended to determine if the utility is in compliance with PSC regulations in these areas.

On February 22, 1989, Sanico, Inc., sewage treatment system was inspected for compliance with KRS 278 and PSC regulations (807 KAR). This utility consists of a collection system. This system is located in Mason County and has approximately 114 customers. No representative of Sanico, Inc., was present at the time of the inspection.

The improvements or corrections necessary to bring this facility into compliance with KRS 278 and PSC regulations (807 KAR) are as follows:

Lift Station behind residence at 361 Hinton Drive

1. The raw sewage pump on the left is missing. This pump needs to be replaced and put in service. (see attached photo) (807 KAR 5:071, Section 7, 1)
2. The lid covering the lift station needs to be secured to the walls of the lift station. (807 KAR 5:071, Section 7, 1)
3. Sewage was overflowing from the overflow line. This problem needs to be alleviated. (807 KAR 5:071, Section 7, 1)
4. The sewage overflow from the lift station needs to be limed. (807 KAR 5:071, Section 7, 1)
5. All exposed electrical wires need to be protected. (807 KAR 5:071, Section 7, 4)

Lift station at the end of Hinton Drive
(see attached photo)

1. The pumps in the lift station need to be wired correctly. The pumps should be wired so they will operate independently of each other. Also the pumps should be wired to alternate operation. (807 KAR 5:071, Section 7, 1)
2. The lid covering the lift station needs to be secured to the wall of the lift station. (807 KAR 5:071, Section 7, 1)
3. The door to the control panel needs to be kept locked. (807 KAR 5:071, Section 7, 1)
4. The pump controls need to be inspected and repaired or replaced as necessary to properly operate the sewage lift pumps. (807 KAR 5:071, Section 7, 1)
5. All sludge deposits in the creek should be removed. (807 KAR 5:071, Section 7, 4)
6. All exposed electrical wires need to be protected. (807 KAR 5:071, Section 7, 4)

7. The power needs to be restored. (807 KAR 5:071, Section 7, 1)
8. The odor being emitted needs to be alleviated. (807 KAR 5:071, Section 7, 1)
9. The power handle at the electric box on the electric pole needs to be secured in the "on" position. (807 KAR 5:071, Section 7, 4)

Recommendations

The existing conditions at the two lift stations violate the Commission's service regulations 807 KAR 5:071, Section 7(1).

The repair or correction of the deficiencies listed above is necessary in order to restore this facility to an acceptable operating condition. The pertinent section of the Kentucky Administrative Regulations has been listed by each deficiency for your convenience. A written response should be prepared and forwarded to the Commission by April 10, 1989, outlining a correction schedule stating what has been completed or what will be done to correct each deficiency and the related cost of each correction. A starting date and a completion date should be given for corrections that are to be completed after the date this response is mailed.

Submitted,
March 7, 1989


Larry N. Urdike
Utility Investigator

EBJ

CK



SANICO, INC.
Lift Station at 361 Hinton Dr.
Pump Controls & Missing Raw Sewage Pump



SANICO, INC.
Lift Station at 361 Hinton Dr.
Missing Raw Sewage Pumps.